

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FLOYD SCOTT,

Plaintiff,

v.

ADVENTIST HEALTH BAKERSFIELD,
et al.,

Defendants.

Case No.: 1:22-cv-01334-NODJ-CDB
SECOND SCREENING ORDER
21-DAY DEADLINE

Plaintiff Floyd Scott is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). The Court should dismiss a complaint if it lacks a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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1 **II. PLEADING REQUIREMENTS**

2 **A. Federal Rule of Civil Procedure 8(a)**

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
 4 exceptions.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002). A complaint must contain
 5 “a short and plain statement of the claims showing that the pleader is entitled to relief.” Fed. R.
 6 Civ. P. 8(a)(2). “Such a statement must simply give the defendant fair notice of what the
 7 plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512 (internal
 8 quotation marks & citation omitted).

9 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
 10 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
 11 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must
 12 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
 13 *Id.* (quoting *Twombly*, 550 U.S. at 570). Factual allegations are accepted as true, but legal
 14 conclusions are not. *Id.* (citing *Twombly*, 550 U.S. at 555).

15 The Court construes pleadings of pro se prisoners liberally and affords them the benefit of
 16 any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). However, “the
 17 liberal pleading standard . . . applies only to a plaintiff’s factual allegations,” not his legal
 18 theories. *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989). Furthermore, “a liberal interpretation
 19 of a civil rights complaint may not supply essential elements of the claim that were not initially
 20 pled,” *Brunsv v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (internal
 21 quotation marks & citation omitted), and courts “are not required to indulge unwarranted
 22 inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation
 23 marks & citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not
 24 sufficient to state a cognizable claim, and “facts that are merely consistent with a defendant’s
 25 liability” fall short. *Iqbal*, 556 U.S. at 678 (internal quotation marks & citation omitted).

26 **B. Linkage and Causation**

27 Section 1983 provides a cause of action for the violation of constitutional or other federal
 28 rights by persons acting under color of state law. *See* 42 U.S.C. § 1983. To state a claim under

1 section 1983, a plaintiff must show a causal connection or link between the actions of the
 2 defendants and the deprivation alleged to have been suffered by the plaintiff. *See Rizzo v. Goode*,
 3 423 U.S. 362, 373-75 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
 4 deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative
 5 act, participates in another’s affirmative acts, or omits to perform an act which he is legal required
 6 to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740,
 7 743 (9th Cir. 1978) (citation omitted).

8 C. Supervisory Liability

9 Liability may not be imposed on supervisory personnel for the actions or omissions of
 10 their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at 676-77; *see e.g.*,
 11 *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir. 2010) (plaintiff required to
 12 adduce evidence the named supervisory defendants “themselves acted or failed to act
 13 unconstitutionally, not merely that subordinate did”), *overruled on other grounds by Castro v.*
 14 *Cnty of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016); *Jones v. Williams*, 297 F.3d 930, 934
 15 (9th Cir. 2002) (“In order for a person acting under color of state law to be liable under section
 16 1983 there must be a showing of personal participation in the alleged rights deprivation: there is
 17 no respondeat superior liability under section 1983”).

18 Supervisors may be held liable only if they “participated in or directed the violations, or
 19 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th
 20 Cir. 1989). “The requisite causal connection may be established when an official sets in motion a
 21 ‘series of acts by others which the actor knows or reasonably should know would cause others to
 22 inflict’ constitutional harms.” *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009). Accord
 23 *Starr v. Baca*, 652 F.3d 1202, 1205-06 (9th Cir. 2011) (supervisory liability may be based on
 24 inaction in the training and supervision of subordinates).

25 Supervisory liability may also exist without any personal participation if the official
 26 implemented “a policy so deficient that the policy itself is a repudiation of the constitutional
 27 rights and is the moving force of the constitutional violation.” *Redman v. Cty. of San Diego*, 942
 28 F.2d 1435, 1446 (9th Cir. 1991) (citations & quotations marks omitted), *abrogated on other*

1 grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970).

2 To prove liability for an action or policy, the plaintiff “must ... demonstrate that his
 3 deprivation resulted from an official policy or custom established by a ... policymaker possessed
 4 with final authority to establish that policy.” *Waggy v. Spokane County Washington*, 594 F.3d
 5 707, 713 (9th Cir.2010). When a defendant holds a supervisory position, the causal link between
 6 such defendant and the claimed constitutional violation must be specifically alleged. *See Fayle v.*
 7 *Stapley*, 607 F.2d 858, 862 (9th Cir. 1979). Vague and conclusory allegations concerning the
 8 involvement of supervisory personnel in civil rights violations are not sufficient. *See Ivey v.*
 9 *Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

10 III. DISCUSSION

11 A. Plaintiff’s First Amended Complaint

12 Plaintiff’s first amended complaint names the following entities or individuals as
 13 defendants in this action:

14 Adventist Health Bakersfield

15 John Doe, Wheelchair Attendant/RN

16 Kathleen L. Thomas, RN

17 David Reed Condie, MD

18 Gallagher Bassett, Insurance Agency

19 Christina Dietrich, Insurance Agent

20 Gwen Arroyo, SCLA

21 Compass Group, parent company of Adventist Health Bakersfield

22 National Union Insurance Company of Pittsburg, underwriter

23 Timothy Miller, RN/Professional Liability Claims Manager

24 (Doc. 7 at 2-6.) Plaintiff seeks \$5,000,000 in damages. (*Id.* at 16-17.)

25 B. The Factual Allegations

26 Plaintiff contends that on January 15, 2021, he was transported to Adventist Health
 27 Bakersfield, a contracted medical facility of the California Department of Corrections and
 28 Rehabilitation (“CDCR”) and California State Prison-Los Angeles County (“CSP-LAC”). (Doc. 7

1 at 10-11.) Plaintiff was escorted by an Adventist Health Bakersfield employee, a state actor, to an
2 examination room. (*Id.* at 11.) He was instructed to get up from the wheelchair by the
3 “Wheelchair Attendant,” but once Plaintiff took a step forward, the leg chains caught on the
4 wheelchair’s footrest, and he fell “face first with no way to prevent the fall that caused an
5 immediate dent and a knot to form” on his left knee. (*Id.*) Plaintiff contends the attendant did not
6 act “with good faith” or assist him while he was “in full waist chains with hand cuffs and leg
7 chains with ankle cuffs.” (*Id.*) Plaintiff states he is 63 years old. (*Id.*) Plaintiff asserts that had the
8 attendant assisted him up from the wheelchair, he would not have fallen or suffered any pain. (*Id.*)
9 After the fall, Plaintiff was carried to a hospital bed by the attendant and a correctional officer.
10 (*Id.*)

11 Plaintiff alleges he advised Defendant Thomas that he was in pain and pointed out the
12 injury to his left knee. (Doc. 1 at 12.) Thomas failed to provide pain medication and “did nothing
13 which amounts to deliberate indifference.” (*Id.*) When the “emergency team” arrived, Defendant
14 Condie checked for a concussion, but Plaintiff never complained of a head injury. (*Id.*) Plaintiff
15 advised Condie he was in pain and “showed Condie the left knee with the dent and the knot.”
16 (*Id.*) Plaintiff alleges Condie did not provide pain medication, nor did the doctor order an x-ray or
17 MRI. (*Id.*) Plaintiff contends Condie was deliberately indifferent “by denying and delaying
18 treatment” to Plaintiff’s left knee. (*Id.*)

19 Plaintiff asserts Defendants Doe, Thomas and Condie were state actors who “failed to act
20 with reasonable care and due diligence” during Plaintiff’s visit to Adventist Health Bakersfield
21 “for a US Thyroid Biopsy.” (Doc. 7 at 12-13.) Plaintiff contends their actions were witnessed by a
22 “CDCR Staff Member.” (*Id.* at 13.)

23 Plaintiff further contends that upon his return to CSP-LAC, later x-rays and an MRI show
24 an injury to his left knee. (Doc. 7 at 13.) He asserts he was “told by several Doctors that he would
25 have pain in the left knee for the rest of his life.” (*Id.*)

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1 **C. Plaintiff's "Statement of Claim"**

2 Plaintiff asserts that Defendant Adventist Health Bakersfield and their parent company,
 3 Defendant Compass Group, contract with CDCR and CSP-LAC to "handle several Medical
 4 Appointments" for state prisoners. (Doc. 7 at 13.) He contends the contract between CDCR, CSP-
 5 LAC and Defendant Adventist Health Bakersfield places it "in nexus acting as a State Action"
 6 (*Id.* at 14.) Plaintiff suffered the injury to his left knee while in the "direct care/custody" of
 7 Adventist Health Bakersfield's wheelchair attendant (Defendant Doe) and Plaintiff was not
 8 provided with medical treatment or care "as would a private citizen." (*Id.*) Plaintiff asserts he
 9 contacted Adventist Healthcare Bakersfield several times to obtain the wheelchair attendant's
 10 name but did not receive a response. (*Id.*) Further, Plaintiff contends Defendant Gallagher Bassett
 11 and its employees—Defendants Arroyo and Dietrich—failed to respond to his numerous attempts
 12 to file a claim for his knee injury. (*Id.*) Nor did Plaintiff receive a response from Defendant
 13 National Union Insurance Company of Pittsburg. (*Id.* at 14-15.) Plaintiff contends Defendant
 14 Miller "is the Adventist Health Medical Centers person from the Office of Risk Management and
 15 he failed to assist [Plaintiff] when [he] attempted to file a claim" concerning his injury. (*Id.* at 15.)
 16 Plaintiff asserts he has contacted the office several times seeking the wheelchair attendant's
 17 name. (*Id.*) He contends Defendant Miller "failed to allow" Plaintiff to file a claim. (*Id.*) Plaintiff
 18 contends these "inactions" violated "his Due Process to file a legitimate claim" and that
 19 Defendant Adventist Health Bakersfield "and its employees and Insurance were under contract to
 20 CDCR and CSP-LAC to provide Proper Medical Care to Prisoners including the Plaintiff." (*Id.*)

21 **D. Analysis**

22 The Court construes Plaintiff's first amended complaint to allege Eighth Amendment
 23 deliberate indifference to serious medical needs claims against Defendants Adventist Health
 24 Bakersfield, John Doe, Thomas and Condie, as well as Fourteenth Amendment due process
 25 claims against Defendants Adventist Health Bakersfield, Gallagher Bassett, Compass Group,
 26 National Union Insurance Company of Pittsburg, Arroyo, Dietrich and Miller.

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Eighth Amendment: Deliberate Indifference Standard

Prison officials violate the Eighth Amendment if they are “deliberate[ly] indifferen[t] to [a prisoner’s] serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A medical need is serious if failure to treat it will result in ““significant injury or the unnecessary and wanton infliction of pain.””” *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (9th Cir. 2014) (quoting *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc)).

To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must first “show a serious medical need by demonstrating that failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain. Second, the plaintiff must show the defendants’ response to the need was deliberately indifferent.” *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett*, 439 F.3d at 1096 (quotation marks omitted)).

As to the first prong, indications of a serious medical need “include the existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of chronic and substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014) (citation & internal quotation marks omitted); accord *Wilhelm*, 680 F.3d at 1122; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (“Examples of serious medical needs include ‘[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of chronic and substantial pain’”).

As to the second prong, deliberate indifference is “a state of mind more blameworthy than negligence” and “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’” *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). Deliberate indifference is shown where a prison official “knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to

1 abate it.” *Id.* at 847. In medical cases, this requires showing: (a) a purposeful act or failure to
 2 respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.
 3 *Wilhelm*, 680 F.3d at 1122 (quoting *Jett*, 439 F.3d at 1096). “A prisoner need not show his harm
 4 was substantial; however, such would provide additional support for the inmate’s claim that the
 5 defendant was deliberately indifferent to his needs.” *Jett*, 439 F.3d at 1096 (citing *McGuckin*,
 6 974 F.2d at 1060).

7 Deliberate indifference is a high legal standard. *Toguchi v. Chung*, 391 F.3d 1051, 1060
 8 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the facts from
 9 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person
 10 ‘must also draw the inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “If a prison
 11 official should have been aware of the risk, but was not, then the official has not violated the
 12 Eighth Amendment, no matter how severe the risk.” *Id.* (quoting *Gibson v. County of Washoe*,
 13 *Nevada*, 290 F.3d 1175, 1188 (9th Cir. 2002)).

14 To prevail on a deliberate-indifference claim, a plaintiff must also show that harm resulted
 15 from a defendant’s wrongful conduct. *Wilhelm*, 680 F.3d at 1122; *see also Jett*, 439 F.3d at 1096;
 16 *Hallett v. Morgan*, 296 F.3d 732, 746 (9th Cir. 2002) (prisoner alleging deliberate indifference
 17 based on delay in treatment must show delay led to further injury).

18 “A private physician or hospital that contracts with a public prison system to provide
 19 treatment for inmates performs a public function and acts under color of law for purposes of §
 20 1983.” *George v. Sonoma Cnty. Sheriff’s Dep’t*, 732 F. Supp. 2d 922, 934 (N.D. Cal. 2010) (citing
 21 *West v. Atkins*, 487 U.S. 42, 56 n. 15 (1988) & *Lopez v. Dep’t of Health Servs.*, 939 F.2d 881, 883
 22 (9th Cir.1991)). In order to state a claim against private entities who have performed a public
 23 function and have acted under color of law for purposes of Section 1983, Plaintiff must allege
 24 facts demonstrating that his constitutional rights were violated based upon a “policy, decision, or
 25 custom promulgated or endorsed by the private entity.” *Id.* at 939-40; *see Rodriguez v. Plymouth*
 26 *Ambulance Serv.*, 577 F.3d 816, 822 (7th Cir. 2009) (stating that, “like a municipality, a private
 27 corporation can be liable if the injury alleged is the result of a policy or practice, or liability can
 28 be demonstrated indirectly by showing a series of bad acts and inviting the court to infer from

them that the policy-making level of government was bound to have noticed what was going on and by failing to do anything must have encouraged or at least condoned the misconduct of subordinate officers"); *McRorie v. Shimoda*, 795 F.2d 780, 784 (9th Cir. 1986) (to state an official capacity claim under section 1983, a plaintiff must allege that the official was acting pursuant to a policy or custom).

Adventist Health Bakersfield, John Doe, Thomas & Condie

7 Initially, the Court notes Plaintiff has not alleged any facts by which the Court could
8 reasonably infer that Plaintiff's constitutional rights were violated based upon a policy, decision,
9 or custom promulgated or endorsed by Defendant Adventist Health Bakersfield. *George*, 732 F.
10 Supp. 2d at 939-40. Therefore, Plaintiff fails to state an Eighth Amendment claim against
11 Defendant Adventist Health Bakersfield. Out of an abundance of caution, Plaintiff will be granted
12 leave to amend his complaint to cure this deficiency, assuming he can do so in good faith.

13 Next, even liberally construed, Plaintiff's first amended complaint fails to allege
14 cognizable Eighth Amendment deliberate indifference claims against Defendants Doe, Thomas
15 and Condie. Plaintiff meets the first prong of the deliberate indifference test by asserting he
16 suffered an injury to his left knee resulting in chronic pain. *Colwell*, 763 F.3d at 1066. However,
17 even liberally construing the first amended complaint, Plaintiff fails to meet the second prong of
18 the relevant test. This is so because Plaintiff has alleged nothing more than negligent medical
19 treatment by Defendants Doe, Thomas and Condie. *See Farmer*, 511 U.S. at 835 (deliberate
20 indifference is “a state of mind more blameworthy than negligence” and “requires ‘more than
21 ordinary lack of due care for the prisoner’s interests or safety’”). Negligent medical care or
22 treatment is insufficient to state an Eighth Amendment claim. *See Estelle*, 429 U.S. at 106 (“[A]
23 complaint that a physician has been negligent in diagnosing or treating a medical condition does
24 not state a valid claim of medical mistreatment under the Eighth Amendment”); *Wood v.*
25 *Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990) (even gross negligence is insufficient to
26 establish deliberate indifference). “Medical malpractice does not become a constitutional
27 violation merely because the victim is a prisoner.” *Estelle*, 429 U.S. at 106. And a difference of
28 opinion between a prisoner-patient and prison medical authorities regarding treatment does not

1 give rise to a § 1983 claim.” *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981) (internal
 2 citation omitted). To prevail, a plaintiff “must show that the course of treatment the doctors chose
 3 was medically unacceptable under the circumstances ... and ... that they chose this course in
 4 conscious disregard of an excessive risk to plaintiff’s health.” *Jackson v. McIntosh*, 90 F.3d 330,
 5 332 (9th Cir. 1996) (internal citations omitted). Plaintiff has alleged no facts indicating Defendant
 6 Doe’s conduct was intentional, nor has he alleged any facts indicating Defendants Thomas and
 7 Condie’s conduct was intentional or something more than negligence or an ordinary lack of due
 8 care. This Court accepts Plaintiff’s facts as true, but not his legal theories. *Neitzke*, 490 U.S. at
 9 330 n.9. Here, despite Plaintiff’s asserted legal theories, the first amended complaint fails to
 10 allege sufficient facts to support his Eighth Amendment deliberate indifference to serious medical
 11 needs claims.

12 In sum, Plaintiff fails to allege Eighth Amendment deliberate indifference to serious
 13 medical needs claims against Defendants Adventist Health Bakersfield, Doe, Thomas or Condie.
 14 Plaintiff will be granted leave to amend to cure the deficiencies identified, assuming he can do so
 15 in good faith. Plaintiff is cautioned that he must allege *facts* sufficient to state a claim. Simply
 16 stating a defendant was deliberately indifferent is a legal theory, not a fact.

17 Fourteenth Amendment: Due Process Standard

18 The Fourteenth Amendment protects persons from deprivations of life, liberty, or property
 19 without due process of law. U.S. Const. amend. XIV. The Due Process Clause “protects persons
 20 against deprivations of life, liberty, or property; and those who seek to invoke its procedural
 21 protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S.
 22 209, 221 (2005). When a protected interest is implicated, the Due Process Clause provides certain
 23 procedural guarantees. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). The
 24 amount of process or specific procedures required vary by context and the particular interest at
 25 stake. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

26 “[T]he due process guarantee does not entail a body of constitutional law imposing
 27 liability whenever someone cloaked with state authority causes harm.” *County of Sacramento v.*
 28 *Lewis*, 523 U.S. 833, 848 (1998). “It is well established that negligent conduct is ordinarily not

enough to state a claim alleging a denial of liberty or property under the Fourteenth Amendment.”
See *Doe v. Beard*, NO. EDCV 14-02262 DDP (SPx), 2014 WL 3507196, *6 (C.D. Cal. July 14, 2014), citing *Daniels v. Williams*, 474 U.S. 327, 330 (1986)); *Davidson v. Cannon*, 474 U.S. 344, 347 (1986) (“[T]he Due Process Clause of the Fourteenth Amendment is not implicated by the lack of due care of an official causing unintended injury to life, liberty or property. In other words, where a government official is merely negligent in causing the injury, no procedure for compensation is constitutionally required”).

Adventist Health Bakersfield & Related Insurance Defendants

9 Plaintiff seeks to hold Defendants Adventist Health Bakersfield, Gallagher Bassett,
10 Compass Group, National Union Insurance Company of Pittsburg, Arroyo, Dietrich and Miller
11 liable for unspecified Fourteenth Amendment due process violations based upon those entities or
12 individuals' failures to respond to his various inquiries or requests. (*See* Doc. 7 at 14 [“Plaintiff
13 contacted AHB several times to get the Wheelchair Attendants name. The Plaintiff never received
14 the Wheelchair Attendants name. AHB and its Parent Company and their Insurance Providers
15 Gallagher Bassett and their employee Gwen Arroyo, SCLA and Christina Dietrich failed to
16 respond to the Plaintiffs numerous attempts to file a claim”] & 15 [and no response “from their
17 Insurance Writer The National Union Insurance Company of Pittsburgh who is listed as an
18 Underwriter”].)

19 “The concept of substantive due process ... forbids the government from depriving a
20 person of life, liberty, or property in such a way that shocks the conscience or interferes with
21 rights implicit in the concept of ordered liberty.” *Nunez v. City of Los Angeles*, 147 F.3d 867, 871
22 (9th Cir.1998) (citation & internal quotation marks omitted). To establish a claim, plaintiff “must,
23 as a threshold matter, show a government deprivation of life, liberty, or property.” *Action
24 Apartment Ass’n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026 (9th Cir. 2007)
25 (quoting *Nunez*, 147 F.3d at 871). “The Due Process Clause takes effect only if there is a
26 deprivation of a protected interest.” *Nunez*, 147 F.3d at 874. Here, Plaintiff fails to identify a
27 protected interest. “There is no general liberty interest in being free from capricious government
28 action.” *Id.* at 873. The Court will grant Plaintiff leave to amend. To the extent he is able in good

1 faith, Plaintiff should clearly state the pertinent factual allegations and the basis for relief. It could
 2 be inferred that Plaintiff believes he has a protected interest in a response to his requests or
 3 inquiries to Adventist Health Bakersfield and the related insurance defendant entities or
 4 individuals regarding the identify of Defendant Doe, the wheelchair attendant. In order to state a
 5 cognizable claim for the violation of substantive due process, Plaintiff must identify a protected
 6 interest that was deprived in a manner that “shocks the conscience or interferes with rights
 7 implicit in the concept of ordered liberty.” *Id.* at 871. See *Waters v. Hollywood Tow Service*, No.
 8 CV 07-7568 CAS (AJW), 2010 WL 11465238, at *14 (C.D. Cal. July 27, 2010) (“[T]he use of
 9 substantive due process to extend constitutional protection to economic and property rights has
 10 been largely discredited. Rather, recent jurisprudence restricts the reach of the protections of
 11 substantive due process primarily to liberties deeply rooted in this Nation's history and tradition”)
 12 (citations and quotations omitted).

13 To state a procedural due process claim, a plaintiff must allege: (1) a deprivation of a
 14 constitutionally protected liberty or property interest, and (2) a denial of adequate procedural
 15 protections. *Kildare v. Saenz*, 325 F.3d 1078, 1085 (9th Cir. 2003). A prisoner has a liberty
 16 interest protected by the Due Process Clause only where the restraint “imposes atypical and
 17 significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Keenan v.*
 18 *Hall*, 83 F.3d 1083, 1088 (9th Cir. 1996) (quoting *Sandin v. Connor*, 515 U.S. 472, 484 (1995)).
 19 Under the facts alleged, Plaintiff has not established that he suffered restraints outside the normal
 20 incidents of prison life. Incarcerated persons must rely on written correspondence to submit
 21 requests or inquiries to outside entities, agencies or individuals for information. That restriction is
 22 a reality of prison life, and the Court is skeptical that Plaintiff can show such a restriction imposes
 23 an atypical or significant hardship regarding the ordinary incidents of prison life.

24 Notably too, as a predicate to Section 1983 liability, a public official must integrally
 25 participate in the alleged constitutional violations. *Boyd v. Benton County*, 374 F.3d 773, 780 (9th
 26 Cir. 2004). The Ninth Circuit recognized “[w]e have yet to define the minimum level of
 27 involvement for liability under the integral-participant doctrine,” however, “[t]he official’s
 28 individual actions need not themselves rise to the level of a constitutional violation, but the

1 official must be more than a mere bystander.” *Hernandez v. Skinner*, 969 F.3d 930, 941 (9th Cir.
 2 2020) (citations omitted) (quoting *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1090 (9th Cir.
 3 2011)). As such, the Ninth Circuit points to the standards of causation under tort law, as
 4 constitutional violations under Section 1983 are a subspecies of tort law. *Skinner*, 969 F.3d at
 5 941. There are two standards of causation under tort law: proximate and but-for cause. Id.
 6 “Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by
 7 the predicate conduct.” *Paroline v. United States*, 572 U.S. 434, 445 (2014). In contrast, but-for
 8 cause exists where the injury would not have occurred “but-for” that conduct. *White v. Roper*, 901
 9 F.2d 1501, 1505-06 (9th Cir. 1990). Here, even assuming without deciding that Adventist Health
 10 Bakersfield and the insurance related defendants are public officials in this context,¹ Plaintiff fails
 11 to allege facts indicating they “integrally participate[d]” in the alleged constitutional violations.
 12 *Boyd*, 374 F.3d at 780. Plaintiff fails to show causation. He alleges no facts addressing the
 13 foreseeability of harm for these defendants’ purported failure to respond to his inquiries or
 14 requests regarding the true name of Defendant Doe. In other words, Plaintiff has not shown or
 15 alleged how Defendants’ unresponsiveness precluded him from filing a claim. Nor has Plaintiff
 16 alleged sufficient facts to show but for these Defendants’ conduct, he would have filed some
 17 unidentified claim or claims other than those asserted in this action. *Paroline*, 572 U.S. at 445;
 18 *White*, 901 F.2d at 1505-06.

19

20 ¹*See Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (“While generally not applicable to private
 21 parties, a § 1983 action can lie against a private party when ‘he is a willful participant in joint action with
 22 the State or its agents.’”) (quoting *Dennis v. Sparks*, 449 U.S. 24, 27 (1980)); *see also Appleby v. Johnson
 23 & Johnson Corporation*, No. 2:21-07109 CJC (ADS), 2022 WL 2987182, at *2 (C.D. Cal. July 26, 2022)
 24 (in civil rights action where prisoner plaintiff named private party as defendant, court found “J&J is a
 25 private party, and there are no facts to show that J&J willfully participated in any joint action with the
 26 State of California or its agents. Nor is it enough for the FAC to allege, in conclusory fashion, that J&J
 27 acted as an agent of the CDCR. Without more, the FAC fails to state a Section 1983 claim for deliberate
 28 indifference under the Eighth or Fourteenth Amendments against J&J”); *Redford v. Greendorf
 Corporation*, No. CV 20-3260 JGB (PVC), 2020 WL 13810215, at * 3 (C.D. Cal. Aug. 26, 2020) (in civil
 rights action, prisoner plaintiff named private business entity and various employees as defendants; court
 determined “Plaintiff has not adequately alleged that Defendants’ actions constitute anything more than
 private conduct” for their denials of his written requests for refund); *Johnson v. Natural Roots Marijuana
 Dispensary*, No. 13cv0642 WQH (DHB), 2013 WL 2905296, at *4 (S.D. Cal. June 13, 2013) (in jail
 detainee’s suit against owner and its employees or volunteers, court found “Plaintiff’s Complaint fails to
 allege facts sufficient to show that any Defendant acted on behalf of, or in any way which is attributable
 to, the State”).

1 Lastly, and significantly, the failures alleged by Plaintiff amount to mere negligence.
 2 Plaintiff alleges no facts indicating intentional conduct or action on the part of either Adventist
 3 Health Bakersfield or the related insurance defendants. Hence, Plaintiff fails to state any
 4 Fourteenth Amendment due process claim against these entities or individuals. *Lewis*, 523 U.S. at
 5 848; *Davidson*, 474 U.S. at 347; *Doe*, 2014 WL 3507196 at *6. See *Dixon v. Wesbrook*, No. 1:11-
 6 CV-01290 AWI JLT, 2012 WL 6160797, at *2, *4 (E.D. Cal. Dec. 11, 2012) (dismissing
 7 Fourteenth Amendment due process claim against police officers who did not arrest individuals at
 8 plaintiff's request and stating "Inaction cannot be used to invoke a violation of the Constitution");
 9 *Guillen v. Fox*, No. 1:03-cv-06004-LJO-MJS, 2011 WL 1134459, at *4 (E.D. Cal. Mar. 28, 2011)
 10 ("The due process clause does not guarantee that the Defendants take due care. The Court will not
 11 impose liability for negligent inflictions of harm. To be liable, the conduct must have been
 12 intended to injure in some unjustifiable way").

13 Despite the deficiencies identified above, Plaintiff will have an opportunity to amend his
 14 complaint to cure these deficiencies, assuming he can do so in good faith.

15 **V. CONCLUSION AND ORDER**

16 Based on the above, the Court finds that Plaintiff's first amended complaint fails to state a
 17 claim upon which relief can be granted. Plaintiff will be granted an opportunity to file a second
 18 amended complaint curing the deficiencies identifies in this order, to the extent he is able to do so
 19 in good faith. *Lopez*, 203 F.3d at 1130. If Plaintiff does not wish to file a second amended
 20 complaint, he may file a notice of voluntary dismissal.

21 If Plaintiff wishes to file a second amended complaint, any such amended complaint
 22 should be brief, Fed. R. Civ. P. 8(a), but it must state what each named defendant did that led to
 23 the deprivation of Plaintiff's constitutional rights, *Iqbal*, 556 U.S. at 678-79. Although accepted
 24 as true, the "[f]actual allegation must be [sufficient] to raise a right to relief above the speculative
 25 level" *Twombly*, 550 U.S. at 555 (citations omitted). The amended complaint shall be no
 26 longer than a total of 25 pages, including the text and any exhibits. Plaintiff should plainly state
 27 the constitutional provision upon which his claim relies, and shall clearly and succinctly state
 28 what happened, when it happened, and how each defendant was involved.

1 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his
2 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”
3 complaints).

4 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
5 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, any second amended
6 complaint must be “complete in itself without reference to the prior or superseded pleading.”
7 Local Rule 220.

8 Accordingly, the Court **ORDERS** that:

- 9 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form; and,
- 10 2. **Within 21 days** from the date of service of this order, Plaintiff must either (1) file
11 a second amended complaint curing the deficiencies identified by the Court in this order,
12 or (2) file a notice of voluntary dismissal (Fed. R. Civ. P. 41(a)(1)(A)(i)).

13 **If Plaintiff fails to comply with this order, the Court will recommend that this action**
14 **be dismissed, without prejudice, for failure to obey a court order and for failure to**
15 **prosecute.**

16 IT IS SO ORDERED.

17 Dated: **February 15, 2024**


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UNITED STATES MAGISTRATE JUDGE

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